

EXHIBIT 26

1 BEFORE THE AMERICAN ARBITRATION ASSOCIATION
2 CASE NO. 18115Y0107106

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4 BRISTOL-MYERS SQUIBB,

5 Claimant,

6 v.

7 SOMERVILLE FIDELCO ASSOCIATES,

8 Respondent.

9 - - -

10

11 DEPOSITION UNDER ORAL EXAMINATION OF

12 MICHAEL SOLAKOV

13 Clifton, New Jersey

14 February 9, 2007

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16

17

18 REPORTED BY: MARGO HRONCICH, CSR

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20

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22 ESQUIRE DEPOSITION SERVICES

23 90 Woodbridge Center Drive

24 Woodbridge, New Jersey 07095

25 (732) 283-1060

26

27 JOB #59648

EXHIBIT

tables

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1 Transcript of the deposition of
 2 MICHAEL SOLAKOV, called for Oral Examination in the
 3 above-captioned matter, said deposition taken
 4 pursuant to Superior Court Rules of Practice and
 5 Procedure by and before MARGO A. HRONCICH, a
 6 Certified Shorthand Reporter and Notary Public for
 7 the State of New Jersey, at the offices of DRINKER,
 8 BIDDLE & REATH, LLP, 500 Campus Drive, Florham Park,
 9 New Jersey, on Friday, February 9, 2007, commencing
 10 at 9:50 a.m.

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ESQUIRE DEPOSITION SERVICES

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	6 DEPOSITION SUPPORT INDEX Direction to Witness Not to Answer Page Line Page Line Page Line None Request for Production of Documents Page Line Page Line Page Line None Stipulations Page Line Page Line Page Line None Question Marked Page Line Page Line Page Line None 15 16 17 18 19 20 21 22 23 24 25	8 1 finish your answer before I ask you a question, and, 2 by the same token, if you can just wait until I've 3 completed my question before you start answering the 4 question. 5 It's also important that you answer 6 verbally and not just give a nod of the head or say 7 "uh-huh" because the court reporter can't interpret 8 what you mean by that. 9 If you don't understand a question, 10 please let me know that. I want to make sure you 11 understand every question I ask you, so if there's 12 some portion of it that you don't understand, let me 13 know and I'll attempt to rephrase it in a way that 14 you can understand it. 15 Do you have any questions about how 16 we're going to proceed this morning? 17 A. No questions. 18 Q. Where are you currently employed? 19 A. Slavco Construction. 20 Q. And what is your position with 21 Slavco? 22 A. General manager. 23 Q. What are your duties and 24 responsibilities as a general manager? 25 A. To oversee all operations, every
	7 1 MICHAEL SOLAKOV, c/o Slavco 2 Construction, Inc., 164 Getty Avenue, Clifton, New 3 Jersey, 07011, called as a witness, after having 4 been duly sworn, was examined and testified as 5 follows: 6 DIRECT EXAMINATION BY MR. VINICOMBE: 7 Q. Good morning, Mr. Solakov. 8 A. Good morning. 9 Q. I introduced myself off the record, 10 but let me just put on the record, my name is 11 Charles Vinicombe. I represent Bristol-Myers 12 Squibb. Bristol-Myers Squibb is the tenant at a 13 facility that has brought an arbitration proceeding 14 against the landlord, Somerville Fidelco Associates. 15 We're here this morning to take your 16 deposition. Have you ever been deposed before? 17 A. Yes. 18 Q. Approximately how many times? 19 A. A couple times. 20 Q. Okay. Let me just go over sort of a 21 few of the ground rules, even though some of them 22 may be familiar to you. 23 It's important that we not speak at 24 the same time, otherwise it makes the court 25 reporter's life difficult; so I will wait until you	9 1 operation, from estimating to bidding, to completion 2 of the job. 3 Q. And how long have you been with 4 Slavco? 5 A. Three years. 6 Q. What business is Slavco in? How 7 would you describe its business? 8 A. We're an environmental company doing 9 from selective demolition to demolition to 10 environmental issues, from asbestos to mercury 11 contaminated soil. 12 Q. Before joining Slavco, were you in 13 the environmental field at all, in the business? 14 A. A long time. In the late '80s, prior 15 to Slavco, '80 to '92. 16 Q. Who did you work for during that time 17 period? 18 A. My father's company. 19 Q. What's the name of that company? 20 A. Mace, M-a-c-e, Construction. 21 Q. Was that also an environmental 22 business? 23 A. That was a construction business, but 24 back then, that's when asbestos was coming out, 25 lead.

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<p>1 Q. And where did you work between '92 2 and when you joined Slavco? 3 A. I worked for my father's companies, 4 either a construction company in the states, or we 5 also resided in Europe, in the Republic of 6 Macedonia. 7 Q. So would it be accurate to say that 8 since 1980 you've been in the construction and/or 9 environmental business up through today? 10 A. Yes. 11 Q. Are there any certifications or 12 licenses that you hold in the environmental business 13 or the construction business? 14 A. Certified asbestos supervisor in 15 Virginia, New Jersey, New York State, Connecticut, 16 Pennsylvania, OSHA 40-hour Haz-WOPER. 17 Q. Forty-hour? 18 A. H-a-z-W-O-P-E-R, Haz-WOPER. It's for 19 hazardous materials. 20 Q. To become a certified asbestos 21 supervisor and to obtain those certifications in 22 each of the states that you mentioned, what are the 23 requirements to obtain that certification? 24 A. A minimum of 40-hour classes that's 25 recognized by the EPA. In New Jersey you have to</p>	<p>10 1 A. Yes. 2 Q. What are those? 3 A. We are certified to perform asbestos 4 in New Jersey, Connecticut, New York State, 5 Pennsylvania, that's it. 6 Q. Do you recall when Slavco obtained 7 that certification? Did it predate your joining 8 Slavco -- 9 A. Yes. 10 Q. -- or was it recent? 11 And what does that asbestos 12 certification allow Slavco to do? 13 A. To perform asbestos abatement in each 14 state. 15 Q. Do you know how long Slavco has been 16 in business? 17 A. Since 1992. 18 Q. And you are here today in response to 19 a subpoena that we served on you; is that correct? 20 A. Yes. 21 (Exhibit BMS-31, Certification of 22 Service and Subpoena Ad Testificandum and Duces 23 Tecum served upon Slavco Construction, Inc., is 24 received and marked for Identification.) 25 Q. Let me hand you what I've had marked</p>
<p>11 1 Q. follow up with the test; in other states you just -- 2 that's proof enough. 3 Q. When did you first become a certified 4 asbestos supervisor, and do you recall which state 5 you first obtained that certification? 6 A. Connecticut. 7 Q. Do you recall what year? 8 A. 2004. 9 Q. When did you obtain your 10 certification in New Jersey? 11 A. 2004. All about in the same time, 12 2004. 13 Q. And the OSHA Haz-WOPER certification, 14 when did you obtain that? 15 A. February 2005. 16 Q. What does that allow you to do? 17 A. Contaminated soil, PCBs, mercury, you 18 know. If there's a hazardous spill, oil spill 19 cleanup, we'll oversee it. 20 Q. The certification as an asbestos 21 supervisor, what does that qualify you to do? 22 A. To perform asbestos work, also to 23 supervise all asbestos work on-site. 24 Q. Does Slavco, the business, the 25 company, hold any certifications or licenses?</p>	<p>11 1 as BMS-31. 2 The first page is just a 3 certification of service, but if you turn to the 4 second page where the subpoena starts, do you 5 recognize this as a subpoena that you were provided 6 with on behalf of Slavco? 7 A. Yes. 8 Q. And did you have an opportunity to 9 review the subpoena? 10 A. Yes. 11 Q. And did you discuss it with your 12 supervisor at Slavco? 13 A. Discussed it with only the owner. 14 Q. And who is that? 15 A. Slavco. 16 Q. What's his first name? 17 A. Slavco. 18 Q. Slavco is the first name? 19 A. Yes. 20 Q. What's his last name? 21 A. Madzarov, M-a-d-z-a-r-o-v. 22 Q. I can pronounce "Slavco" better than 23 I can his last name, so did you have a chance to 24 review the subpoena with Slavco? 25 A. We just glanced over it.</p>

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<p>1 Q. And did he ask you to appear on 2 behalf of the company in response to the subpoena -</p> <p>3 A. Yes.</p> <p>4 Q. -- at this deposition?</p> <p>5 A. Yes.</p> <p>6 Q. Now, you'll see in the first page 7 there are a number of subject matters listed in the 8 subpoena. It has paragraph numbers 1 through 8. 9 Did you and Slavco review those 10 paragraphs and come to the conclusion that you were 11 the most knowledgeable person on those subjects --</p> <p>12 A. Yes.</p> <p>13 Q. -- for this project?</p> <p>14 A. Yes.</p> <p>15 Q. And you'll see a little bit further 16 back on page 5, where it says "Document Request," 17 and then there's a list of paragraphs 1 through 14. 18 Did you have the opportunity to 19 review those document requests with Slavco before 20 you appeared today?</p> <p>21 A. I did not review them with Slavco. I 22 just gave a brief explanation of what was needed 23 and -- you know.</p> <p>24 Q. And did you collect any materials in 25 response to that subpoena?</p>	<p>14</p> <p>1 or at the end, I'll make a copy for Mr. Maher. 2 What I've marked BMS-32, we were just 3 talking about documents that you had arranged to be 4 gathered in response to the subpoena, and I've now 5 marked that as BMS-32.</p> <p>6 Did you direct somebody at Slavco to 7 gather these materials for you?</p> <p>8 A. I gathered a majority of them and 9 then I had the final copies made today.</p> <p>10 Q. And did you review them and come to 11 the conclusion that you had gathered all the 12 materials that were responsive to the particular 13 requests that were listed in this subpoena?</p> <p>14 A. Yes.</p> <p>15 Q. And I see, certainly, in the first 16 page, and when we have an opportunity, I'll glance 17 through some of the other pages and see if I have 18 any questions, but essentially on the first page it 19 appears to be a list which is entitled "Job 20 Scheduling Timeline," and then it has various dates 21 and events listed to next to it, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Is this a document you prepared to 24 refresh your recollection of the events that had 25 occurred at the site while Slavco was working there?</p>
<p>1 A. Yes.</p> <p>2 Q. And do you have any of those 3 materials with you today?</p> <p>4 A. Yes, I have them all.</p> <p>5 Q. Okay. Are those originals or an 6 extra set of copies?</p> <p>7 A. I have to check. They should all be 8 copies.</p> <p>9 Q. I just want to make sure I'm not 10 going to be taking your only copy from the company, 11 so that's the reason I ask. I also want to mark 12 them as well, so.</p> <p>13 A. I'll double-check.</p> <p>14 (Brief pause.)</p> <p>15 They're all copies.</p> <p>16 (There is a discussion off the 17 record.)</p> <p>18 (Exhibit BMS-32, collection of 19 documents produced by Slavco Construction, Inc., 20 facing page entitled "Job Scheduling Timeline," is 21 received and marked for Identification.)</p> <p>22 Q. I take it you made one copy for us, 23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. So what I'll do when we have a break,</p>	<p>15</p> <p>17</p> <p>1 A. I had our controller, previous 2 controller, Phyllis Jones, prepare them.</p> <p>3 Q. Okay. And as we go through my 4 questions, certainly, if you need to review this 5 document to refresh your memory, feel free to do so. 6 And like I said, later on I'll go through it and if 7 I have any specific questions, I'll let you know, 8 but I want to make sure you have that available to 9 you.</p> <p>10 And my understanding is that, and 11 correct me if I'm wrong, Slavco was hired to do a 12 roof removal job at 76 Fourth Street in Somerville, 13 New Jersey; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. And for purposes of this deposition, 16 I'll refer to that site as the Somerville facility 17 or the Somerville site, just so we both are on the 18 same page as far as what job we're talking about. 19 Is that okay?</p> <p>20 A. Okay.</p> <p>21 Q. Do you recall when Slavco was 22 retained to provide services at the Somerville 23 facility?</p> <p>24 A. We were -- there was -- first Badger 25 Roofing called us in September to give us a price</p>

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<p>1 for asbestos abatement of a roof, and we forwarded 2 proposal to them. Then SK Properties -- how do you 3 call their name? What's their name? 4 Q. SK Associates, SK Properties. 5 A. They signed a contract. That 6 proposal was forwarded to them and they signed a 7 contract, or a proposal, on 10/12, 2005. 8 Q. Do you recall who it was from Badger 9 that had contacted your office? 10 A. It was -- I think his last name was 11 Badger. 12 Q. Scott Badger? 13 A. That's it, Scott Badger. 14 Q. Had you known Scott Badger before 15 that phone call was made to your office? 16 A. No. 17 Q. And do you know who he contacted at 18 Slavco initially, was it you or somebody else? 19 A. It went through our receptionist and 20 it came to us -- and it came to me, and back then we 21 had a field manager, Mike Petrovic. 22 Q. How do you spell this last name? 23 A. P-e-t-r-o-v-i-c. 24 Q. And did you eventually speak to Scott 25 Badger?</p>	<p>18</p> <p>1 A. Yes. 2 Q. Did you go back to the site after 3 that initial visit but before you generated your 4 proposal or did you just make that initial visit and 5 then generate the proposal? 6 A. Initial visit, generated the 7 proposal. 8 Q. At some point in time did you speak 9 to Scott Badger about what services were being 10 requested of Slavco? 11 A. Well, what happened, I think 12 everything after that was forwarded -- I assume was 13 forwarded to Barry Ages' office. 14 Q. Did you speak to Mr. Ages? 15 A. Yes. 16 Q. Did he describe for you what services 17 he was seeking to retain from -- 18 A. Yes. 19 Q. And what was that description? What 20 did he tell you? 21 A. To remove approximately 7,000 -- I'm 22 sorry. Scott Badger did state to remove 70 squares 23 of asbestos roofing. 24 Q. Did they describe for you, either 25 Mr. Badger or Mr. Ages, what the status of the</p>
<p>19</p> <p>1 A. We first went and took a look at the 2 job, we typed up a proposal and we forwarded it to 3 Badger Roofing, that's what our proposal is made out 4 to. 5 Q. And you actually went out to the site 6 at that time? 7 A. Yes. 8 Q. And who did you meet with? 9 A. Nobody. 10 Q. So you just went out and did a 11 walk-through of the site -- 12 A. Yes. 13 Q. -- to get an idea of what the job 14 would involve? 15 A. Yes. 16 Q. You didn't meet with anybody from 17 Badger or from the tenant, Bristol Meyer Squibb, or 18 from the landlord, SKA, or Somerville Fidelco, at 19 the time? 20 A. No. We arrived at the site. There 21 was no access, so we drove right across the street 22 so we could try to get an elevated view of the roof, 23 but we were never on the roof. 24 Q. You said you generated a proposal at 25 some point in time; is that correct?</p>	<p>21</p> <p>1 project was at that point? 2 A. No. 3 Q. Did either of them convey to you that 4 Badger had started to do the roof removal and then 5 had stopped the roof removal when it became apparent 6 that asbestos was encountered at the site? 7 A. When the proposal was generated, no. 8 Immediately following the generation of the 9 proposal. 10 MR. VINICOMBE: I realize some of 11 these documents may have been marked before, but I 12 don't have the marked versions. I'll re-mark these 13 as additional exhibits. 14 (Exhibit BMS-33, fax from Heather at 15 Slavco Construction, Inc., to Scott Badger, dated 16 October 20, 2005, with attached Asbestos Abatement 17 Proposal, is received and marked for 18 Identification.) 19 Q. I'll hand you what's been marked 20 BMS-33. 21 This is what appears to be a fax from 22 Heather at your office to Scott Badger, dated 23 October 20, 2005, with an Asbestos Abatement 24 Proposal attached to it. 25 Is that the proposal you were talking</p>

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SOLAKOV - Direct

22	24
1 about earlier? 2 A. Yes. 3 Q. And was this proposal accepted? 4 A. This proposal was not accepted by 5 Badger Roofing. 6 Q. Was it accepted by somebody else? 7 A. Yes. Let me just... 8 It was accepted by Somerville Fidelco 9 Associates. 10 Q. Okay. Let me hand you what was 11 previously marked as Exhibit BMS-9, which appears to 12 be another copy of the proposal, signed by 13 Somerville Fidelco Associates on the second page. 14 A. Yes. 15 Q. Okay. So it was accepted by 16 Somerville Fidelco Associates, even though the 17 proposal was addressed to Badger Roofing Company; is 18 that correct? 19 A. Yes. 20 Q. Now, what was the scope of services 21 that Slavco was proposing to perform on this 22 project? 23 A. Removal of approximately 7,000 square 24 feet of asbestos-containing roofing material. 25 Q. And at the time that you generated	1 participate in some portion of the roof removal? 2 A. To remove the asbestos-containing 3 roofing material, the foam -- above the foam, the 4 roofing layer, the roofing material. 5 Q. Were you ever provided with lab 6 results that indicated the presence of asbestos 7 materials on the roof? 8 A. No. 9 Q. Were you informed that somebody had 10 received lab results confirming the presence of 11 asbestos in the roofing material? 12 A. Yes. 13 Q. Did you ever arrange for any testing, 14 any testing for asbestos, to be done yourself? 15 A. No. 16 Q. So would it be fair to say you were 17 relying upon the information they provided to you 18 that asbestos was present; is that accurate? 19 A. Yes. 20 Q. And you treated the material as if it 21 contained asbestos; is that accurate? 22 A. Yes. 23 Q. The pricing on this proposal was for 24 \$32,000, correct? 25 A. Yes.
23	25
1 this proposal, did you have an understanding that 2 Badger had been originally retained by Somerville 3 Fidelco Associates to do the roof removal? 4 A. Yes. 5 Q. So would it be fair to say it was 6 your understanding at that time that Slavco was 7 basically proposing to provide services to take over 8 the roof removal from Badger? 9 A. Yes. 10 Q. Was Slavco proposing to have any 11 involvement with the roof replacement on this 12 project? 13 A. No. 14 Q. So your services were limited to 15 completing the roof removal project that Badger had 16 started, is that accurate? 17 A. Just the asbestos portion of the roof 18 removal. 19 Q. Was there another aspect of the 20 removal other than what you just said was asbestos 21 removal? 22 A. Just roofing material. 23 Q. Just so I'm clear, was the scope of 24 Slavco's services to do a complete roof removal or 25 to at least complete the roof removal or just to	1 Q. It was to include a deposit of \$6400, 2 and then the balance to be paid later on, correct? 3 A. Yes. 4 Q. And was Slavco paid in full for the 5 \$32,000? 6 A. Yes. 7 Q. Now, the proposal states, under 8 "Scope of Work," that "Slavco will utilize NJ 9 licensed asbestos handlers and supervisors on this 10 project." 11 Were licensed asbestos handlers and 12 supervisors utilized on the project? 13 A. Yes. 14 Q. And I think I know the answer to this 15 question, but I'll ask, who was the supervisor? 16 A. Nikola Paunovski, N-i-k-o-l-a, 17 P-a-u-n-o-v-s-k-i. 18 Q. It's easier for me to say "Nikola," 19 so I'll refer to him that way. 20 So you were not the supervisor on the 21 project -- 22 A. No. 23 Q. -- at any time? 24 A. No. 25 Q. If you know, who were the licensed

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<p style="text-align: right;">26</p> <p>1 asbestos handlers that were used on the project?</p> <p>2 A. I don't have all their names.</p> <p>3 Q. But they were licensed, to your</p> <p>4 knowledge?</p> <p>5 A. Yeah, all of them.</p> <p>6 Q. And do you recall approximately how</p> <p>7 many employees were used on the job?</p> <p>8 A. Anywhere from eight to twelve.</p> <p>9 Q. Now, prior to this job, personally,</p> <p>10 how many asbestos abatement or removal projects had</p> <p>11 you personally been involved in?</p> <p>12 A. Prior to this?</p> <p>13 Q. Yes, if you can estimate. I realize</p> <p>14 you can't --</p> <p>15 A. At least over 50.</p> <p>16 Q. And if Nikola was serving as the</p> <p>17 supervisor on the project, how would you describe</p> <p>18 what your role or involvement was with the project?</p> <p>19 A. I was the field manager.</p> <p>20 Q. What tasks did you personally</p> <p>21 perform in that capacity?</p> <p>22 A. Direct communications with the owner.</p> <p>23 We also had to make sure the material was on the</p> <p>24 site, all disposal, everybody was licensed, their</p> <p>25 medical, their fit tests, all proper documents and</p>	<p style="text-align: right;">28</p> <p>1 A. In the State of New Jersey you do not</p> <p>2 need to have an asbestos license to remove a roof as</p> <p>3 long as you're replacing it and removing under, I</p> <p>4 think it was 5,200 square feet a day, something like</p> <p>5 that.</p> <p>6 Q. Do you also have to use certain</p> <p>7 methodologies or equipment for you not to be</p> <p>8 required to have an asbestos license in New Jersey</p> <p>9 to do an asbestos removal job on a roof?</p> <p>10 A. I'm not familiar with that because we</p> <p>11 are qualified.</p> <p>12 Q. And NESHAP is National Emission</p> <p>13 Standards For Hazard Air Pollutants, correct?</p> <p>14 A. Yes.</p> <p>15 Q. When you made the original proposal</p> <p>16 on this project, did you have any understanding at</p> <p>17 that time whether Badger was going to continue to</p> <p>18 play any role on the project if Slavco's services</p> <p>19 were retained?</p> <p>20 A. We had no clue.</p> <p>21 Q. At some point was it brought to your</p> <p>22 attention that Badger would continue to participate</p> <p>23 and that their role would be to do the roof</p> <p>24 replacement after you did the asbestos removal?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">27</p> <p>1 respirators and material needed to complete the job.</p> <p>2 Q. Do you recall how many times you were</p> <p>3 actually at the site?</p> <p>4 A. I was there a minimum of four to five</p> <p>5 times.</p> <p>6 Q. And were you at the site continuously</p> <p>7 during the time period that the Slavco employees</p> <p>8 were doing the roof removal?</p> <p>9 A. For a portion of the work, yes.</p> <p>10 Q. I'm going to hand you what was</p> <p>11 previously marked BMS-14.</p> <p>12 This appears to be a Slavco invoice</p> <p>13 dated December 27, 2005, for the job; is that</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And it makes reference to a \$6400</p> <p>17 deposit and a \$25,600 balance, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And, to your knowledge, was this bill</p> <p>20 paid in its entirety?</p> <p>21 A. Yes.</p> <p>22 Q. Do you have any understanding whether</p> <p>23 an asbestos license issued by the State of New</p> <p>24 Jersey is required to remove asbestos materials from</p> <p>25 a roof?</p>	<p style="text-align: right;">29</p> <p>1 Q. And how was that brought to your</p> <p>2 attention?</p> <p>3 A. I spoke to Barry, and we had a</p> <p>4 meeting to go over the work procedures that we were</p> <p>5 going to implement and then to have -- after we were</p> <p>6 completed, to have Badger Roofing behind us, laying</p> <p>7 down the roof.</p> <p>8 Q. And on the job did the Badger</p> <p>9 employees work alongside the Slavco employees at the</p> <p>10 same time on the project?</p> <p>11 A. While we were working?</p> <p>12 Q. Yes.</p> <p>13 A. Yes.</p> <p>14 Q. And at any time, to your knowledge,</p> <p>15 was Slavco supervising or directing any of the work</p> <p>16 of the Badger employees --</p> <p>17 A. No.</p> <p>18 Q. -- on the job?</p> <p>19 A. No.</p> <p>20 Q. Now, the tenant at this facility is</p> <p>21 Bristol-Myers Squibb Company.</p> <p>22 At some point in time was it brought</p> <p>23 to your attention that Bristol-Myers was a tenant at</p> <p>24 the facility?</p> <p>25 A. Yes.</p>

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<p>1 Q. Did Mr. Ages bring that to your 2 attention? Or, let me ask, how did you learn that? 3 A. I spoke to a field manager from 4 Squibb, I still have his card, when we were at the 5 job site. So from Barry we knew that there was a 6 tenant there. 7 Q. Who was that field manager? 8 A. I don't have his name. 9 Q. Let me give you a couple of names. I 10 don't want you to guess, but if any of these names 11 jog your recollection as the person you spoke to, 12 you can let me know. 13 John Deck? 14 A. I don't know. 15 Q. Bob Papa? 16 A. I don't know. 17 Q. Bob Post? 18 A. I don't have a recollection. 19 Q. You said you still have the business 20 card. Do you have the business card here? 21 A. No. It's probably in my computer 22 somewhere. 23 Q. When you met with that Bristol-Myers 24 representative, what did you discuss? 25 A. We walked through the building prior</p>	30	<p>1 New Jersey, correct? 2 A. Yes. 3 Q. What aspect of that exceeded the 4 requirements of the regulations? 5 A. In the State of New Jersey you don't 6 have to -- we used a foam material, like a shave 7 cream foam, and you spray it, and we blanketed the 8 roofing material so that when you're scraping and 9 pulling it up, the dust doesn't go airborne. 10 Q. Have you used that method before on 11 other properties? 12 A. Yes. 13 Q. Is it common for you to use that 14 method on other projects? 15 A. For New York City. 16 Q. At any time were you asked to make 17 arrangements to have core samples taken of any of 18 the roof materials? 19 A. Can you repeat that? 20 Q. Yes. At any time after Slavco was 21 retained on this project, were you asked by anybody 22 to make arrangements for core samples to be taken of 23 the roof materials? 24 A. No. 25 Q. After Slavco was retained on this</p>	32
<p>1 to starting, it could have been the end of November, 2 beginning of September, to see the TuffWrap was 3 installed, so he walked me through the building. 4 Q. What's TuffWrap? 5 A. TuffWrap is -- it's a plastic. It's 6 a company that puts up plastic, so if there's any 7 asbestos abatement or any kind of work above, that 8 that dust doesn't fall down, to keep the area 9 dust-free. 10 Q. Other than the TuffWrap that had been 11 installed, to your knowledge, were any measures 12 taken to limit or prevent dust or debris from the 13 completion of the roof removal project from entering 14 the building? 15 A. When we started? 16 Q. Yes. 17 A. Okay. When we started, we went 18 beyond the regulations of New Jersey, and we have a 19 work plan that I sent to them. And in the work plan 20 we stated that we were going to remove the roof 21 without crumbling, pulverizing or reducing to any 22 kind of powder, we're going to keep it wet, 23 adequately wet, and dispose of it properly. 24 Q. Now, you said that your plan went 25 above the regulatory requirements by the State of</p>	31	<p>1 job, are you aware of anybody else having taken core 2 samples of the roofing materials? 3 A. There was a phone call made that 4 there was a sample taken, I think it was from EHI, 5 Environmental Health Investigations, that they took 6 a test and it came back positive, asbestos. 7 Q. Let me hand you what's been 8 previously marked as exhibits BMS-15 and BMS-16. 9 BMS-15 appears to be a draft of a 10 letter that Heather from Slavco forwarded to 11 Mr. Ages, and BMS-16 appears to be a signed copy of 12 that letter, dated October 26, 2005, sent to the New 13 Jersey Department of Labor. 14 With regard to BMS-15, the draft 15 letter that Heather forwarded, did you have any 16 involvement in the drafting of that letter? 17 A. Drafting the letter, no. 18 Q. Do you know who, if anybody, at 19 Slavco was involved in drafting that document? 20 A. It would be only Heather. 21 Q. What is Heather's position at Slavco? 22 A. She current -- she no longer works 23 with us. She was an administrative assistant. 24 Q. And do you have any understanding as 25 to why Heather forwarded a draft of a letter</p>	33

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<p style="text-align: right;">34</p> <p>1 addressed to the New Jersey Department of Labor to 2 Barry Ages?</p> <p>3 A. Yes.</p> <p>4 Q. And what's that understanding?</p> <p>5 A. In the state of New Jersey, to apply 6 for your -- to submit a notification -- you have ten 7 days, ten calendar days to perform the work. To 8 bypass that and to start to work immediately, you 9 have to forward a reason why you want to start the 10 work.</p> <p>11 Q. And in this letter it appears to be 12 requesting a waiver of the ten-day notification 13 period, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Do you have an understanding why 16 notice has to be given to the New Jersey Department 17 of Labor before doing an asbestos removal job?</p> <p>18 A. So they have enough time to properly 19 manage -- to oversee the job, because their 20 inspectors do come out.</p> <p>21 Q. On this job do you recall any 22 inspector from the New Jersey Department of Labor 23 coming to the site?</p> <p>24 A. No.</p> <p>25 Q. Were you ever informed that a</p>	<p style="text-align: right;">36</p> <p>1 from Harry H. Leavy Associates suggesting that core 2 samples be taken of the roof at the Somerville 3 facility?</p> <p>4 A. I have to go back one question. Were 5 you saying during the -- after our work was 6 performed or prior?</p> <p>7 Q. At any time.</p> <p>8 A. At any time? There was a meeting 9 where there was -- somebody did discuss samples, 10 samples being taken, not core samples, roof samples.</p> <p>11 Q. To your knowledge, were any core 12 samples taken of the roofing materials before Badger 13 performed its work on the site? Were you ever 14 informed of that?</p> <p>15 A. I don't know, I don't know.</p> <p>16 Q. On other roofing jobs where Slavco is 17 retained to do the roof removal -- and I recognize 18 in this instance you were taking over a portion of a 19 job that another contractor had started -- but on 20 other roof removal jobs where you're the only 21 contractor that's retained to do a roof removal, 22 does Slavco have a practice of making inquiries as 23 to whether core samples have already been taken of 24 roofing materials before conducting its own removal 25 activities?</p>
<p style="text-align: right;">35</p> <p>1 representative of the New Jersey Department of Labor 1 2 had ever been to the site?</p> <p>3 A. No.</p> <p>4 Q. With regard to this letter which is 5 requesting a waiver of the ten-day notification 6 period, have you seen this type of letter used on 7 other asbestos removal jobs that you've been 8 involved in in New Jersey?</p> <p>9 A. Yes.</p> <p>10 Q. Are there any circumstances on an 11 asbestos removal job in New Jersey where you don't 12 either have to give a ten-day notification or 13 request a waiver of the ten-day notification period?</p> <p>14 A. If the project is less than 1 linear 15 foot of asbestos, you don't have to give a 16 notification.</p> <p>17 Q. And other than that, you do have to 18 give notification?</p> <p>19 A. Yes.</p> <p>20 Q. At any point did you, or, to your 21 knowledge, anybody else at Slavco ever ask Barry 22 Ages or Badger if core samples had ever been taken 23 of the roof at the Somerville facility?</p> <p>24 A. No.</p> <p>25 Q. Were you ever provided with a report</p>	<p style="text-align: right;">37</p> <p>1 A. Since -- we do not ask that. If the 2 term -- if the word comes up, "asbestos," and 3 somebody states to us there's asbestos on the roof, 4 we assume and we just proceed with asbestos removal.</p> <p>5 Q. But if you're making a proposal on a 6 roofing job where somebody doesn't mention the 7 presence of asbestos, do you typically make 8 inquiries of the owner as to whether the roof has 9 been tested for asbestos or whether core samples 10 have been taken of any roofing materials?</p> <p>11 A. Yes, we do.</p> <p>12 Q. Do you do that on every job where 13 you're proposing to provide services for a roof 14 removal?</p> <p>15 A. Yes.</p> <p>16 Q. And why is that?</p> <p>17 A. There's different procedures if 18 you're removing construction debris compared to 19 asbestos. There's different disposal sites, higher 20 costs, so we have to make sure -- plus there's laws 21 that we have to remove the roof the proper way.</p> <p>22 Q. And what is the difference in those 23 procedures between an ordinary roofing job and a 24 roofing job where you encounter asbestos?</p> <p>25 A. Lots of differences. First, the</p>

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<p style="text-align: right;">38</p> <p>1 people you can use, they do not have to be asbestos 2 certified if the roof is non-asbestos. The disposal 3 site, construction debris you can dispose of at any 4 local site in New Jersey that accepts roofing 5 material. The price is completely different. 6 There's, you know, numerous aspects.</p> <p>7 Q. What about in terms of the equipment 8 that's used or the methods of removal that are used, 9 are there any differences in that?</p> <p>10 A. Yes, in removing a non-asbestos roof, 11 you're allowed to cut it. You can do anything to 12 it, cut it, rip it, you know, the easiest way to 13 remove it.</p> <p>14 When it is an asbestos roof, you 15 cannot pulverize it; you have to limit the dust.</p> <p>16 Q. And is that to prevent non-friable 17 asbestos from becoming friable?</p> <p>18 A. Yes.</p> <p>19 Q. And if there is dust, does that 20 indicate to you that it's friable asbestos?</p> <p>21 A. No.</p> <p>22 Q. What would be an indication that 23 non-friable asbestos has become friable?</p> <p>24 A. An air sample.</p> <p>25 Q. Is my understanding correct that a</p>	<p style="text-align: right;">40</p> <p>1 New Jersey," Bates Stamped SF00258, is received and 2 marked for Identification.)</p> <p>3 Q. I'm handing you what's been marked 4 BMS-34.</p> <p>5 Can you identify what this document 6 is?</p> <p>7 A. Yes.</p> <p>8 Q. What is it?</p> <p>9 A. It's the work plan that we used to 10 remove the roof at the Somerville project.</p> <p>11 Q. And was this work plan followed at 12 the site?</p> <p>13 A. Yes.</p> <p>14 (Exhibit BMS-35, document entitled 15 "Procedures For The Removal Of Roofing, 76 Fourth 16 Street," Bates stamped SF00641 through 643, is 17 received and marked for Identification.)</p> <p>18 Q. I've handed you what's been marked 19 BMS-35.</p> <p>20 Can you identify what that document 21 is?</p> <p>22 A. Procedures for removal of roofing at 23 76 Fourth Street.</p> <p>24 Q. These are Slavco's procedures?</p> <p>25 A. These are our procedures, yes.</p>
<p style="text-align: right;">39</p> <p>1 service was retained to do air sampling during 2 Slavco's roof removal in this project?</p> <p>3 A. Yes.</p> <p>4 Q. And do you know what the results of 5 any of that testing were?</p> <p>6 A. No.</p> <p>7 Q. So you don't know whether or not that 8 testing indicated the presence of asbestos or not?</p> <p>9 A. During the -- there was Environmental 10 Health Investigations. After the completion of the 11 project, we did speak to them and they said 12 everything looked good, but I don't recall physical 13 records.</p> <p>14 Q. Did Slavco retain EHI's services or 15 was it SK Associates that did that?</p> <p>16 A. It was not Slavco.</p> <p>17 Q. On other jobs where Slavco is 18 proposing to do a roof removal, if the building is 19 older than 25 years, is it Slavco's practice to 20 inquire whether asbestos is present of the owner?</p> <p>21 A. We inquire -- well, I wouldn't even 22 say 25 years, say, you know, 15 years, going back, 23 we always inquire if there's asbestos present.</p> <p>24 (Exhibit BMS-34, document entitled 25 "Work Plan & Schedule, 76 Fourth Street, Somerville,</p>	<p style="text-align: right;">41</p> <p>1 Q. Again, were these followed at the 2 site?</p> <p>3 A. Yes.</p> <p>4 Q. Comparing BMS-34 to BMS-35, is BMS-35 5 just a more detailed description of the procedures 6 and work plan that Slavco was following at the site?</p> <p>7 A. Yes.</p> <p>8 (Exhibit BMS-36, document entitled 9 "Slavco Construction, Inc., Standard Operating 10 Procedures," Bates stamped SF00001 through 192, is 11 received and marked for Identification.)</p> <p>12 Q. I've handed you what's been marked 13 BMS-36.</p> <p>14 Can you identify what this document 15 is?</p> <p>16 A. This is our standard operating 17 procedures, Slavco Construction standard operating 18 procedures.</p> <p>19 Q. Now, BMS-34 and 35, the work plan and 20 schedule and the procedures for the removal of the 21 roof, these documents were generated specifically 22 for the Somerville project, correct?</p> <p>23 A. Yes.</p> <p>24 Q. BMS-36, was this generated 25 specifically for the Somerville project or is this</p>

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<p>1 just a general set of standard operating procedures 2 that Slavco references on all projects? 3 A. Just a general. 4 Q. So this document was not generated 5 just for the Somerville job, correct? 6 A. Correct. 7 Q. Now, with regard to the Somerville 8 job, are there certain portions of the standard 9 operating procedures that applied to that job, or 10 was it the entire set of standard operating 11 procedures? 12 A. It was not the entire set. The 13 portions that would be would be the respirator 14 protection program. 15 Q. That's number 3. 16 A. Medical examinations. 17 Q. Okay. Let me just back up. This is 18 a very long document, so I want to make sure we're 19 all referencing the same page. 20 Are you looking at SF00002? 21 A. Yes. 22 Q. Then there's what appears to be an 23 index, correct? 24 A. Correct. 25 Q. The first one you mentioned is item</p>	<p>42</p> <p>1 A. All our workers have a fit test. 2 Q. A what? 3 A. A fit test. 4 Q. What's that? 5 A. It's a test to make sure the mask 6 properly adheres to the face. 7 Q. To your knowledge, the Slavco 8 employees who were involved in this asbestos removal 9 project, did they wear masks when they were on the 10 job? 11 A. Yes. 12 Q. Other than the mask, is there any 13 other respiratory protection measures that are 14 taken? 15 A. No. 16 Q. Abatement procedures, what abatement 17 procedures were used on this project? 18 A. The ones outlined in BMS-35. 19 Q. To your knowledge, were all those 20 measures taken on this job? 21 A. Yes. 22 Q. Is there another section of the 23 manual that you said was legally required for 24 asbestos abatement? 25 A. Number 2, Medical Examinations.</p>
<p>43</p> <p>1 3, Respiratory Protection Program, correct? 2 A. Correct. 3 Q. What's the next section that applied 4 to this project? 5 A. Medical Examinations, number 2. 6 Q. Okay. Any other sections? 7 A. Number 4, number 5 -- number 4 being 8 Energy Preparedness Procedures -- Emergency -- I'm 9 sorry; number 5, Engineering Controls and Work 10 Practices; number 6, Abatement Procedures; number 7 11 Contamination Procedures, and then number 10, 12 Construction Safety Employee Handbook. 13 Q. Now, are any of these standard 14 operating procedures that you just went through, are 15 any of these required by law if you're doing an 16 asbestos removal project? 17 A. Yes. 18 Q. Which of those, all of them or just 19 some portion of those, to your knowledge? 20 A. To my knowledge, it would be the 21 Medical Examinations, number 2, the Respiratory 22 Protection Program, number 3, number 6, Abatement 23 Procedures. That's it. 24 Q. Okay. Now, on this job what measures 25 were taken with regard to respiratory protection?</p>	<p>45</p> <p>1 Q. What was done with regard to Medical 2 Examinations on this project? 3 A. All our employees, prior to hiring, 4 they have a medical, full medical exam, X-ray, to 5 make sure, you know, they're fit to perform the 6 duties. 7 Q. Is there any other section or did we 8 go through all the ones that you believe are legally 9 required? 10 A. I think we went through all of them. 11 Q. Okay. Can you describe for me in as 12 much detail as you can recall what methods were used 13 by Slavco to remove and dispose of the asbestos 14 materials on the roof? 15 A. The methods that we used? 16 Q. Yes. 17 A. They would -- Friday night, when we 18 started the job, we mobilized our trailer, our 19 container. We set up our ladder. The workers went 20 on the roof, started prepping the roof, wetting it 21 down adequately, cutting the roof in sections so 22 they can be put through the chute, straight into our 23 container. 24 Q. What type of equipment or tools were 25 used to cut the material?</p>

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<p>1 A. There was a roof warrior. 2 Q. Roof warrior? 3 A. Yes. It's a machine that has a blade 4 so it can slice through the roof. 5 Q. Do you know what type of blade it 6 has? 7 A. Exactly... it's a ripper blade. 8 Q. Other than the roof warrior, was any 9 other equipment or tools used to slice the asbestos 10 material? 11 A. Yes, a roofing slicing machine, 12 cutting machine. 13 Q. Any other tools that were used? 14 A. Axes, shovels, crowbars. That's it. 15 Q. I believe you said earlier the 16 materials, once it was sliced and cut up, were 17 placed in chutes? 18 A. Yes. 19 Q. What's a chute? 20 A. Here's a chute (indicating). It's a 21 plastic piece from the roof that extends down, an 22 enclosed piece that extends down maybe 15 feet. 23 Q. Okay. You've made reference to a 24 photograph contained in the materials marked BMS-32. 25 correct? </p>	<p>46</p> <p>1 A. As the roof is being cut, to suck up 2 the dust, to vacuum the dust. 3 The roof warrior is letter C. That 4 was to bring the roof up, to bring the roof up after 5 being sliced. 6 D, that's our roof warrior being 7 brought onto the roof. 8 E, same thing, Badger Roofing, our 9 chute, the project at Somerville and our container. 10 F, just continuous, the Badger 11 Roofing truck hoisting our equipment up to the roof 12 G, a picture of the chute with 13 plastic behind the wall and the workers on the roof. 14 H, our container with our New Jersey 15 sign, license. 16 I, Badger Roofing truck, our 17 container, the chute. 18 Q. And the materials, I take it from 19 those photos, the materials were transferred from 20 the roof to the dumpster through the use of the 21 chute; is that correct? 22 A. Yes. 23 Q. And the dumpster that contained the 24 materials, how was that disposed of? 25 A. How was it disposed? </p> <p>48</p>
<p>1 A. Yes. 2 Q. Let me do this, since each page, 3 there's no markings, I'm just going to put a letter 4 next to each photo so we all know what we're talking 5 about, and then I'll ask you some questions about 6 that, if that's okay with you. 7 I've put letters next to these 8 photos. 9 The photos that are in this package 10 of materials, are these photographs that you took at 11 the Somerville site during the job? 12 A. Yes. 13 Q. And could you just go through each 14 photo and tell us what the letter is and describe 15 for us what's been shown in each of those pictures? 16 A. Letter A, there's a picture of a 17 building with a chute, ladder and Badger Roofing 18 bringing our equipment on the roof. 19 B, the roof cutter with the HEPA 20 filtration unit. 21 Q. The roof cutter with the HEPA 22 filtration, is there a reason why there's HEPA 23 filtration? 24 A. Yes. 25 Q. Why is that? </p>	<p>47</p> <p>1 Q. Correct. 2 A. It was taken to Grows Landfill. 3 Q. Is that a special site designated for 4 asbestos materials or is that just a general 5 landfill? 6 A. For asbestos. It could be a general 7 landfill, but we utilize that for asbestos. 8 Q. Now, the chute that you used, is that 9 required by regulations, to use a chute if you're 10 transferring asbestos materials from a roof to the 11 ground? 12 A. Yes. 13 Q. Is it appropriate to take roofing 14 materials that contain asbestos and throw it off the 15 side of the building into a dumpster? 16 A. You can do that. 17 (Exhibit BMS-37, Slavco Construction, 18 Inc., Closeout Package, Bates stamped SF00413 19 through 507, is received and marked for 20 Identification.) 21 Q. I hand you what's been marked BMS-37 22 Can you identify what this document 23 is? 24 A. This is our closeout package. 25 Q. And what is a closeout submittal? </p> <p>49</p>

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<p>1 A. After the completion of the project, 2 we supply the customer with the documentation: our 3 asbestos license, our insurance certificate, our 4 waste hauler license and notification, logbooks, 5 sign-off sheets, OSHA samples, waste manifests and 6 employee information.</p> <p>7 Q. Before working on this project, were 8 you familiar with Badger Roofing Company?</p> <p>9 A. No.</p> <p>10 Q. I take it you had never worked with 11 them before on other projects; is that accurate?</p> <p>12 A. Correct.</p> <p>13 Q. Do you know if Badger had recommended 14 Slavco's services to the owner?</p> <p>15 A. Don't know.</p> <p>16 Q. Do you know how it came to be that 17 Slavco was contacted for this job? Did anybody ever 18 explain that to you?</p> <p>19 A. In detail, no, but my understanding 20 is that through Environmental Health Investigations, 21 they wanted -- the air monitor that was on-site.</p> <p>22 Q. So it was EHI or somebody from EHI 23 that --</p> <p>24 A. Yes.</p> <p>25 Q. At any time, either during this</p>	<p>50</p> <p>1 Q. No. My question was, at any point 2 did anybody ask you if Badger had used proper 3 methods or equipment for the removal of asbestos, 4 and I understood your answer to be that issue did 5 come up at a meeting that you attended. Did you 6 respond to that question in any way?</p> <p>7 A. Well, their methodology was -- the 8 way they used it, the roof warrior and everything, 9 was proper, it's just that the -- how can I explain 10 it? It's just suppressing the dust was not right, 11 that's all I'm saying.</p> <p>12 Q. What do you mean by that?</p> <p>13 A. They didn't wet down the material 14 because there was a lot of dust -- they said there 15 was a lot of dust going inside the building.</p> <p>16 Q. Who told you that?</p> <p>17 A. Somebody at the table. I don't 18 recall their names.</p> <p>19 Q. Other than the suppressing of the 20 dust, was there anything else you said in terms of 21 Badger not using the right methods or equipment?</p> <p>22 A. No.</p> <p>23 Q. From your earlier answer, I 24 understand that you're not familiar with the details 25 in terms of the equipment and method that Badger had</p>
<p>1 project or afterwards, were you ever informed about 2 the methods or equipment Badger had used to do the 3 partial roof removal at the site?</p> <p>4 A. Not in detail.</p> <p>5 Q. What was your understanding, if any, 6 as to what methods and equipment they had used?</p> <p>7 A. Just -- no methods, no equipment, 8 just the project went wrong.</p> <p>9 Q. The project went wrong?</p> <p>10 A. Yeah, something went wrong. They 11 found asbestos and they removed a portion of the 12 roof that contained asbestos.</p> <p>13 Q. At any point did Barry Ages or 14 anybody else associated with SK, or Somerville 15 Fidelco, did anybody ever ask you whether Badger had 16 been using proper methods or equipment for the 17 removal of asbestos?</p> <p>18 A. Yes.</p> <p>19 Q. Who asked you that?</p> <p>20 A. I don't recall the person's name. It 21 was a meeting that -- at SK with EHI, with Badger 22 Roofing and myself and I guess a couple of partners.</p> <p>23 Q. What did you tell them when that 24 question was asked of you?</p> <p>25 A. How it was removed properly or --</p>	<p>51</p> <p>53</p> <p>1 used, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Let me hand you what was previously 4 marked as BMS-27. These are copies of photos that 5 were produced to us by Somerville Fidelco.</p> <p>6 My question for you is whether any of 7 the equipment that Slavco used at the site, is that 8 depicted in any of these photographs.</p> <p>9 A. Yes.</p> <p>10 Q. Let's start with the first page, 11 which is 300.</p> <p>12 Is that a piece of Slavco equipment?</p> <p>13 A. Yes.</p> <p>14 Q. And what is that piece of equipment?</p> <p>15 A. Roof warrior.</p> <p>16 Q. How about 301?</p> <p>17 A. The ripper blade attached to the roof 18 warrior.</p> <p>19 Q. 302?</p> <p>20 A. Ripper blade attached to the roof 21 warrior.</p> <p>22 Q. So this is all Slavco equipment shown 23 there?</p> <p>24 A. Looks like it. The picture's not...</p> <p>25 Q. Okay. Let me hand you what's been</p>

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	54		56
1	previously marked BMS-28.	1	using any respiratory -- I don't recall.
2	These are what have been previously	2	Q. And what was the reason for that,
3	identified as photographs of the roof reflecting the	3	keeping them 25 feet away?
4	time period when Badger was doing the roof removal	4	A. Usually, in our standard operations,
5	and replacement, so I understand that this does not	5	we like keeping the work area 25 feet away when
6	depict Slavco's equipment, but I have a few	6	we're working with asbestos.
7	questions for you.	7	Q. And why is that?
8	The piece of equipment that's shown	8	A. It's just our procedure.
9	in BMS 1212, do you recognize what that piece of	9	Q. And is that to prevent other people
10	equipment is?	10	from being exposed to asbestos?
11	I don't want you to guess, but if you	11	A. Yes, if an accident does occur.
12	have any understanding based upon looking at the	12	Q. You had mentioned earlier, you had
13	photo, if you could answer that.	13	used the term NESHAP, which is the National Emission
14	A. I'm not sure. I can assume. It	14	Standards for Hazardous Air Pollutants, correct?
15	looks like a roof cutter and a roof warrior, but	15	A. Yes.
16	this picture's not...	16	Q. Are you familiar with the
17	Q. Can you tell what type of roof cutter	17	requirements under NESHAP for asbestos removal?
18	that is?	18	A. Generally familiar with them.
19	A. I don't know.	19	Q. Is there somebody else at Slavco that
20	Q. How about BMS 1214?	20	you rely upon as having greater knowledge or
21	A. Looks like a roof cutter.	21	expertise with the requirements of NESHAP?
22	Q. From the photo can you tell what type	22	A. If we need to know in detail, we will
23	of roof cutter that is?	23	call an environmental company, an air-monitoring
24	A. No.	24	company or the Department of Labor, because, you
25	Q. How about 1215?	25	know, it depends how you read it.
	55		57
1	A. It looks like the back of a roof	1	Q. Do you know if this roofing job
2	warrior.	2	qualified for an exemption from NESHAP's asbestos
3	Q. In terms of the roof cutter that you	3	removal notification requirement?
4	used, is there a certain type of roof cutter you're	4	A. No, I can't answer that.
5	supposed to use if you're removing	5	Q. Were you ever informed whether,
6	asbestos-containing roofing material?	6	before Badger began its work on the project, whether
7	A. Our procedures are, you know, when	7	any notifications were provided to any governmental
8	we're cutting the roof, we always use -- our	8	agency for the roof job?
9	company, we use Garlock, and we always have a HEPA	9	A. No. I don't know. It wasn't
10	vacuum attached to it.	10	mentioned to us.
11	Q. Are you familiar with a piece of	11	Q. Do you know what an asbestos survey
12	equipment called a Panther saw?	12	is?
13	A. No.	13	A. Yes.
14	Q. Do you know what an RB roof cutter	14	Q. Were you ever informed whether an
15	is?	15	asbestos survey had ever been performed at the
16	A. I don't know what RB is. I know what	16	Somerville facility before Badger started its
17	a roof cutter is.	17	roofing job?
18	Q. When Slavco was providing its roof	18	A. No.
19	removal services and doing the work on the roof, did	19	Q. Were you ever provided a copy of an
20	you notice if any of the Badger employees were using	20	asbestos survey for the Somerville facility?
21	respiratory protective gear of any type?	21	A. No.
22	A. When we were working on the roof?	22	Q. What is an asbestos survey?
23	Q. Yes.	23	A. It's a survey stating the samples
24	A. We kept Badger Roofing employees 25	24	that were taken at a project. And a positive
25	feet away from us, but I don't recall any of them	25	sample's greater than 1 percent -- greater than 1

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<p>1 percent of the material contains asbestos.</p> <p>2 Q. Do you know if the work that Slavco</p> <p>3 did at the site qualifies as renovations under the</p> <p>4 NESHAP regulations?</p> <p>5 A. Yes.</p> <p>6 Q. It did qualify?</p> <p>7 A. It's a renovation.</p> <p>8 Q. Do you know what the regulatory</p> <p>9 definition is of asbestos-containing material?</p> <p>10 A. No.</p> <p>11 Q. Do you know the difference between</p> <p>12 friable and non-friable asbestos-containing</p> <p>13 material?</p> <p>14 A. Yes.</p> <p>15 Q. And what is that difference?</p> <p>16 A. Non-friable is basically floor</p> <p>17 tile -- material that cannot become airborne: floor</p> <p>18 tile, Transite panels, roofing material. Friable</p> <p>19 materials is material that can easily, easily become</p> <p>20 airborne: pipe, piping insulation, boiler, boiler</p> <p>21 breach, stuff like that.</p> <p>22 Q. In your experience, can non-friable</p> <p>23 asbestos material become friable?</p> <p>24 A. Can it? Yes.</p> <p>25 Q. How?</p>	58	<p>1 Q. Was any of the material that Slavco</p> <p>2 removed during the project sanded, ground, cut or</p> <p>3 abraded?</p> <p>4 A. No.</p> <p>5 Q. Was any of the material that Slavco</p> <p>6 encountered during the job crumbled, pulverized or</p> <p>7 reduced to powder, to your knowledge?</p> <p>8 A. No.</p> <p>9 Q. Do you know what the OSHA regulatory</p> <p>10 classification was for the Slavco roofing job?</p> <p>11 A. No.</p> <p>12 Q. Were you familiar with the different</p> <p>13 classes under OSHA for asbestos, class 1, class 2?</p> <p>14 A. Yes, friable, non-friable.</p> <p>15 Q. And do you know what regulatory</p> <p>16 classification this Slavco roofing job fell into</p> <p>17 under those classes?</p> <p>18 A. No.</p> <p>19 Q. The standard operating procedures</p> <p>20 that were referred to earlier, are they periodically</p> <p>21 reviewed and updated by Slavco?</p> <p>22 A. I can't answer that. I don't know</p> <p>23 when the last time is they were updated.</p> <p>24 Q. Do you believe that they're current</p> <p>25 in terms of complying with governmental regulations</p>	60
<p>1 A. If you're grinding non-friable</p> <p>2 without having -- well, that's it.</p> <p>3 Q. If clouds of roofing material dust or</p> <p>4 powder are created when a contractor performs the</p> <p>5 removal of asbestos-containing material, is that an</p> <p>6 indication that non-friable removal methods are not</p> <p>7 being used by the contractor?</p> <p>8 A. It could be, because under the</p> <p>9 roofing material you also have insulation which can</p> <p>10 become very airborne that's non-asbestos, so it's --</p> <p>11 without a sample you cannot, you cannot state.</p> <p>12 Q. Do you know if any</p> <p>13 asbestos-containing materials at the Somerville</p> <p>14 facility would be classified as regulated</p> <p>15 asbestos-containing material?</p> <p>16 A. Regulated?</p> <p>17 Q. Yes.</p> <p>18 A. Well, the roofing material?</p> <p>19 Q. Correct.</p> <p>20 A. If it's asbestos, but under NESHAP,</p> <p>21 if they're going to state regulate it, I'm not sure.</p> <p>22 Q. Did you ever encounter on this job</p> <p>23 any non-friable asbestos-containing material that</p> <p>24 became friable?</p> <p>25 A. No.</p>	59	<p>1 for asbestos removal?</p> <p>2 A. Yes.</p> <p>3 MR. VINICOMBE: I think I'm done. I</p> <p>4 just want to look through the documents while</p> <p>5 Mr. Maher has any questions for you.</p> <p>6 MR. MAHER: If possible, let's take a</p> <p>7 quick break.</p> <p>8 MR. VINICOMBE: Sure. Why don't we</p> <p>9 do that?</p> <p>10 (There is a brief recess.)</p> <p>11 MR. VINICOMBE: I just have a couple</p> <p>12 of questions about the documents that you produced</p> <p>13 to us today.</p> <p>14 BY MR. VINICOMBE:</p> <p>15 Q. There is one document that has</p> <p>16 "Friday, 12/16/05" at the top, and it's in</p> <p>17 handwriting and it's a total of five pages.</p> <p>18 Is this a log of some sort?</p> <p>19 A. That's what the supervisor on-site</p> <p>20 would do, just general log entries.</p> <p>21 Q. Does this appear to be Nikola's</p> <p>22 handwriting?</p> <p>23 Do you recognize his handwriting?</p> <p>24 A. I do not recognize his handwriting.</p> <p>25 His signature should be...</p>	61

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1 Q. On the last page? 2 A. Yes. 3 Q. So this is the supervisor from the 4 job? 5 A. Yes. 6 Q. The only other question I had is 7 there appears to be a fax cover sheet, it says "From 8 Phyllis Jones for Mike Solakov to Scott Badger," 9 dated March 8, 2006. And it starts with "Dear 10 Scott, Our position remains that this bill is 11 grossly overstated from the agreement that was made 12 on-site between Alan and Mike." And then later on 13 in the fax it talks about "If we agree to \$2,880..." 14 Was this some sort of dispute? Was 15 Badger billing fees to Slavco? 16 A. Yes. 17 Q. Can you explain to me what that is 18 referring to? 19 A. The billing was -- when we originally 20 got to the site, he had a crane there, so he 21 assisted us to bring our pieces of equipment to the 22 roof. Then after the first night of work, we had to 23 slow down a little bit because of the temperature, 24 so we did not have a complete night shift. We 25 waited till the morning and we started again. And	62 1 roof removal; is that accurate? 2 Do you want to see your index? 3 A. October -- October 12th. 4 Q. October 12th? 5 A. Yes. 6 Q. I think your proposal -- do you have 7 BMS-33 there, Mr. Solakov? It's your original 8 proposal. 9 A. Yes. 10 Q. Isn't that dated October 20th? 11 A. Let me see. BMS -- 12 Q. BMS-33 -- 13 A. There were two proposals. 14 Q. -- it was a fax cover sheet with your 15 proposal. 16 A. Here we are. 17 Yes. I'm sorry. 18 Q. So your original proposal was October 19 20th? 20 A. Yes. 21 Q. And I heard you testify that that was 22 addressed to Badger Roofing, but actually accepted 23 by Somerville Fidelco as the owner of the facility; 24 is that right? 25 A. Yes.	64
63 1 for Badger Roofing, they thought we were behind 2 schedule. So they had some of their guys lift up 3 the bulkheads for us so we can proceed a little 4 quicker, so that's the bill. 5 Q. And they were billing you for the use 6 of that equipment? 7 A. No, to lift up the bulkheads. 8 Q. And in terms of what Badger billed to 9 you, did you pass that cost on to the owner or did 10 you increase your bill in any way to reflect those 11 expenses? 12 A. No. 13 MR. VINICOMBE: Thank you. 14 CROSS-EXAMINATION BY MR. MAHER: 15 Q. Good morning, Mr. Solakov. My name 16 is Lawrence Maher. I'm with the firm of Greenbaum 17 Rowe, Smith & Davis. We represent Somerville 18 Fidelco, which is the landlord at the Somerville 19 facility that is the subject of this arbitration. 20 The instructions that Mr. Vinicombe 21 gave you regarding the procedure of the deposition 22 still apply, and I'll just ask you a few questions. 23 I think you testified that 24 approximately October 26 the proposal was accepted 25 by Somerville Fidelco and you were hired to do this	63 1 Q. So it would probably be at some time 2 after October 20th that that proposal was accepted? 3 MR. VINICOMBE: Off the record. 4 (Discussion off the record.) 5 Q. In the file you presented today, do 6 you have a copy of that proposal? 7 A. Yes. Because the actual -- the 8 proposal is dated -- the date is October 12th. 9 Q. You know what? Mr. Vinicombe advised 10 me off the record, and I think that there might have 11 been some confusion about the dates in the document 12 that was produced. 13 So it's your testimony that October 14 12th the proposal was accepted by the owner? 15 A. Yes. 16 Q. And once the proposal was accepted, 17 were you ready to start work? 18 A. Yes. 19 Q. Can you tell me what Slavco 20 Construction did once the proposal was accepted on 21 October 12th? 22 A. Barry wanted us to start immediately, 23 so we had to file the ten-day emergency waiver to 24 waive the ten-day notification, and we filed that. 25 We were approved.	65

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<p>66</p> <p>1 Q. Was that the waiver that was drafted 2 by Heather and signed by Barry on October 26th? 3 A. Yes. 4 Q. So that was submitted to the 5 Department of Labor? 6 A. And I think it was the Department of 7 Health and Human Services. 8 Q. And did you start right away? 9 A. No. 10 Q. Why not? 11 A. Barry called us, put the job on hold 12 because the tenants were not ready for us to come to 13 the site. 14 Q. Now, prior to that, had you or anyone 15 else at Slavco Construction met with the tenants at 16 the site? 17 A. No. 18 Q. And when Barry Ages told you to put 19 the job on hold, did he tell you what was the 20 holdup? 21 A. In detail, no, just there was some 22 issues that had to be resolved with the tenants. 23 Q. And what was the next thing that you 24 recall that occurred with the job and the tenant? 25 A. Within a couple week period there was</p>	<p>68</p> <p>1 would be questioned as to what your procedures and 2 plans are? 3 A. No, it's not typical. 4 Q. Were you asked to provide the copy of 5 this thick document that is your standard operating 6 procedures that has been marked BMS-36 -- 7 A. Yes. 8 Q. And who did you provide that to? 9 A. Handed it in to Barry Ages. 10 Q. And was it your understanding this 11 was requested by the tenant as well? 12 A. I don't recall that. 13 Q. Would you typically present this 14 standard operating procedures manual to someone when 15 you were going to do a roof removal job? 16 A. No. 17 Q. Now, did there come a point in time 18 when you actually met with representatives of the 19 tenant at the site? 20 A. Yes. 21 Q. And I think you testified that you 22 walked through the facility; is that correct? 23 A. Through a portion of it, yes. 24 Q. And when you walked through, why did 25 you do that?</p>
<p>67</p> <p>1 no communication, and then, again, we tried to start 2 to do the roof. And Barry put the job on hold 3 again. He said, wait, the tenant's still not ready. 4 So that might have happened two or three times, and 5 then one time for weather. 6 Q. Now, during this period of time that 7 you were told the tenant wasn't ready, do you recall 8 being asked to provide information that the tenant 9 was requesting about the procedures you were going 10 to use? 11 A. Yes. 12 Q. And is that information something 13 that you worked on? 14 A. For a work plan? 15 Q. For anything that was requested by 16 the tenant. 17 A. Well, just for our work plan, the 18 procedures that we were going to implement to... 19 Q. Do you recall receiving a list of 20 questions that the tenant had asked? 21 A. Yes. 22 Q. And is that something that you 23 participated in responding to? 24 A. Yes. 25 Q. Is this typical on a job, that you</p>	<p>69</p> <p>1 A. Just to, I think -- TuffWrap was 2 installed and to see the sections where we were 3 going to remove the roof to make sure there was no 4 voids between the building, you know, to make sure 5 no pieces can fall in or something like that. 6 Q. Now, was that just before you started 7 the work in December of 2005? 8 A. Yes. 9 Q. And do you recall whether there were 10 any voids? 11 A. No, it was all wrapped in plastic 12 very well. 13 Q. When you made that walk-through, did 14 you see any dust or debris inside the facility from 15 previous work on the roof? 16 A. No. 17 Q. Did anybody point out anyplace that 18 had been affected by previous work on the roof? 19 A. No. 20 Q. Now, do you know whether -- 21 A. I'm sorry. I'm sorry. I have to go 22 back to that question. 23 The representative that walked me 24 through, he actually gave me a dust mask to put 25 on -- well, not a dust mask.</p>

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<p>1 Q. A surgical mask?</p> <p>2 A. A PP-100, which is -- that means</p> <p>3 there's a possibility of airborne asbestos, so he</p> <p>4 told me to put that on. And then we walked through</p> <p>5 the final area, which was not wrapped in plastic.</p> <p>6 Q. And, again, when you made the</p> <p>7 walk-through, did you see any evidence of dust or</p> <p>8 debris from the previous roof work inside the</p> <p>9 facility?</p> <p>10 A. No.</p> <p>11 Q. Did you have occasion to go back</p> <p>12 inside the facility after you completed your work on</p> <p>13 the roof?</p> <p>14 A. No.</p> <p>15 Q. Did anyone from Slavco Construction</p> <p>16 go inside after you completed the roof removal?</p> <p>17 A. No.</p> <p>18 Q. Do you have an understanding of why</p> <p>19 the plastic was put up by TuffWrap?</p> <p>20 A. As extra precautionary procedures</p> <p>21 so -- just in case there's any kind of dust or</p> <p>22 anything that falls down, to keep it away from their</p> <p>23 work stations or whatever they have.</p> <p>24 Q. So if the work on the roof were to</p> <p>25 cause any dust or debris to enter the inside of the</p>	<p>70</p> <p>1 the work that Slavco did?</p> <p>2 A. I don't recall that.</p> <p>3 Q. You don't recall?</p> <p>4 A. I don't recall.</p> <p>5 Q. You testified that Slavco used a roof</p> <p>6 cutter that has a vacuum with a HEPA filter; is that</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And that's also for the purpose of</p> <p>10 containing the dust that might be created by the</p> <p>11 roof removal?</p> <p>12 A. Yes.</p> <p>13 Q. So that's another precaution in</p> <p>14 addition to the TuffWrap that is taken to keep the</p> <p>15 dust from getting inside?</p> <p>16 A. Yes.</p> <p>17 Q. And I think you testified that the</p> <p>18 methods that you used on this roof removal were</p> <p>19 actually in excess of the requirements by the New</p> <p>20 Jersey standards; is that true?</p> <p>21 A. Yes.</p> <p>22 Q. Well, why did you use different or</p> <p>23 excessive procedures?</p> <p>24 A. My understanding is to make the</p> <p>25 client happy, basically. They wanted to make sure,</p>
<p>71</p> <p>1 facility, the expectation would be that the plastic</p> <p>2 that TuffWrap put up would catch that?</p> <p>3 A. Yes.</p> <p>4 Q. And, then, do you have any idea what</p> <p>5 TuffWrap does once it has all this plastic full of</p> <p>6 dust and debris, theoretically?</p> <p>7 A. TuffWrap should, if it's asbestos,</p> <p>8 should out-source it and have somebody clean the</p> <p>9 top, or, you know, as it's coming down, have</p> <p>10 negative air units to trap any kind of airborne</p> <p>11 material if anything went through the roof.</p> <p>12 Q. Now, did you observe whether, while</p> <p>13 your work was ongoing, any dust was getting inside</p> <p>14 the premises?</p> <p>15 A. We had no complaints. There was air</p> <p>16 monitoring, I think from Eagle and also from EHI,</p> <p>17 and there were no complaints.</p> <p>18 Q. About the quality of the air?</p> <p>19 A. Yes.</p> <p>20 Q. Did anybody tell you that dust or any</p> <p>21 kind of debris from the roof was entering the</p> <p>22 facility?</p> <p>23 A. At that point, no.</p> <p>24 Q. Did they tell you afterwards that any</p> <p>25 dust or debris entered the facility as a result of</p>	<p>73</p> <p>1 you know, there would be no dust issues inside the</p> <p>2 building. And at that meeting that we had where EHI</p> <p>3 was there, Badger Roofing, Barry and</p> <p>4 representatives, somebody brought up a question, you</p> <p>5 know, is there anything, you know, you can do</p> <p>6 better; so we told them about New York City</p> <p>7 regulations. I walked out to my car, got out the</p> <p>8 New York City regulations and brought it in, which</p> <p>9 is a better standard; it's a higher standard.</p> <p>10 Q. And that's what you were authorized</p> <p>11 to do?</p> <p>12 A. Yes.</p> <p>13 Q. And, again, that was an attempt to</p> <p>14 restrict or prevent any dust or debris from getting</p> <p>15 inside the facility?</p> <p>16 A. Yes.</p> <p>17 Q. Now, I think before, in response to a</p> <p>18 question, you said that whenever you encounter a</p> <p>19 roof removal on a roof that's 15 years or older, you</p> <p>20 inquire as to whether it contains asbestos</p> <p>21 materials; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. And why is that?</p> <p>24 A. Just to make sure we implement the</p> <p>25 proper procedures, we file notification, you know,</p>

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 1 we use -- you know respiratory programs.
 2 Q. I understand that, and I guess I
 3 didn't ask the right question.
 4 Why does it make a difference if a
 5 roof is 15 years old or older?
 6 A. Well, roofing -- I think asbestos
 7 roofing was stopped producing in the late '70s, and
 8 somebody had a grandfather clause, so if the roof
 9 is -- if it is an older roof, it has the possibility
 10 of containing asbestos. If it's a newer roof, you
 11 know, a shingle roof or plywood roof within the last
 12 five or ten years, it has a possibility of not
 13 containing asbestos. Can it? There's still a
 14 possibility.
 15 Q. If a roof is 25 or 30 years old, is
 16 it likely that it contains some sort of asbestos
 17 material?
 18 A. Yes.
 19 Q. And is that common knowledge in your
 20 industry?
 21 A. Yes.
 22 Q. Would you undertake a roof removal
 23 project of a roof that's 25 or 30 years old without
 24 determining whether it contains asbestos material?
 25 A. No, unless somebody states it's

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 1 CERTIFICATE
 2
 3 I, MARGO HRONCICH, a Notary Public
 4 and Certified Shorthand Reporter of the State of New
 5 Jersey, do hereby certify that prior to the
 6 commencement of the examination, MICHAEL SOLAKOV was
 7 duly sworn by me to testify to the truth, the whole
 8 truth and nothing but the truth.
 9 I DO FURTHER CERTIFY that the
 10 foregoing is a verbatim transcript of the testimony
 11 as taken stenographically by and before me at the
 12 time, place and on the date hereinbefore set forth,
 13 to the best of my ability.
 14 I DO FURTHER CERTIFY that I am
 15 neither a relative nor employee nor attorney nor
 16 counsel of any of the parties to this action, and
 17 that I am neither a relative nor employee of such
 18 attorney or counsel, and that I am not financially
 19 interested in the action.
 20
 21
 22
 23 MARGO HRONCICH
 24 Certified Shorthand Reporter and
 25 Notary Public of the State of
 New Jersey

75
 1 asbestos and that's it, there's no survey, and we
 2 already assume it's asbestos.
 3 Q. But if an owner or an architect or an
 4 engineer were to retain you to remove a roof and not
 5 tell you, or, in fact, not mention at all whether it
 6 contained asbestos, would you just remove it or
 7 would you make the necessary inquiries?
 8 A. Necessary inquiries.
 9 MR. MAHER: I have no further
 10 questions, thank you.
 11 MR. VINICOMBE: Thank you.
 12 (The witness is excused.)
 13 (The deposition is concluded at
 14 approximately 11:29 a.m.)
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